IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

MFA.No. 593 of 2002(B)

AGAINST OP(MV).1090/1998 OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL, NEYYATTINKARA
.....

APPELLANTS/CLAIMANTS:
---

1. WILFRED, S/O. SELVANOSE,
   PRASAD BHAVAN, THAZHA CHITTAZHA,
   VATTAPPARA P.O.

2. RETNAKUMARI, W/O. WILFRED,
   PRASAD BHVAN, THAZHA CHITTAZHA,
   VATTAPPARA P.O.

3. JAYAPRASAD, S/O. WILFRED,
   PRASAD BHAVAN, THAZHA CHITTAZHA,
   VATTAPPARA P.O.

4. SHEEJA, D/O. WILFRED (MINOR)
   PRASAD BHAVAN, THAZHA CHITTAZHA,
   VATTAPPARA P..O.

BY ADV. SRI.B.JAYASURYA

RESPONDENTS/RESPONDENTS:
---

1. K. VIJAYAN, MULLUVILA PUTHEN VEEDU,
   KAZHIVOOR. P.O.

2. WILFRED SINGH, APPATTUVILA VEEDU,
   NEAR KANJIRAMKULAM PANCHAYAT SCHOOL,
   KOTTUKAL, NEYYATTINKARA.

3. M/S. ORIENTAL INSURANCE CO.LTD.,
   DIVISIONAL OFFICE, THAKARAPARAMBU JUNCTION,
   PAZHAVANGADI.

4. S. KANNAN, T.C. IX/852,
   PANAYIL VEEDU, V.J. LANE, VELLAYMBALAM.

5. M/S. UNITED INDIA INSURANCE CO. LTD.,
   DIVISIONAL OFFICE, C.W.C. BUILDING,
   L.M.S. COMPOUND, PALAYAM.

R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)
R5 BY ADV.SRI.M.S.PATTALI
SRI.T.VINOD KUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19.11.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

M.F.A. No. 593 of 2002

Dated this 19th day of November, 2007

JUDGMENT

Koshy,J:

A 19 year old youngster, who was studying for 2nd year Degree course, sustained fatal injuries in a motor accident on 17.8.1998 and he died on the same day when the vehicle in which he was travelling was hit by a Van owned by the fist respondent, driven by the 2nd respondent and insured with the 3rd respondent. His father, mother, brother aged 22 and sister aged 17 filed application for compensation claiming Rs. 5 lakhs. Total amount awarded was only Rs.1,50,000/-. Only quantum of compensation is disputed in this appeal.

2. Tribunal fixed Rs.1800/- as the monthly income. The deceased was a 19 year old degree student. His brother was an Engineering student and considering the status of the family, it is contended that a higher notional income should be fixed. It is also stated that Second Schedule came into force in 1994 and accident herein occurred in 1998 and under Section 166-A claim, negligence

on the part of the driver of offending vehicle need not be proved. It is contended that the application was filed under Section 166 and negligence of 2nd respondent was proved and hence compensation awarded shall not be lesser than the compensation mentioned in Second Schedule. Under Second Schedule, for a 19 year old accident victim, if notional income is fixed to Rs.18,000/- per year (Rs. 1250 per month) and after deducting 1/3rd the compensation will be more than Rs.2 lakhs. Hence notional income fixed by the Tribunal is Rs.1800/- per month. We are of the opinion that in the absence of data there is no ground to increase monthly income fixed by the Tribunal. If that be so, after deducting 1/3rd for personal expenses, loss of dependency and family contribution will be Rs.1200/- per month.

3. Then the question is what is the multiplier. It is settled law that when an unmarried person dies, age of the claimants has to be looked into. His mother was only 46 years old. His sister was 17 year old sister may hope something from him. So, 13 is the apt multiplier to be fixed taking guidance from the second schedule. If that be so, compensation for loss of dependency is Rs.1200x12x13 = Rs.1,87,200/-. The Tribunal has awarded only an amount of Rs.1,10,400/-. Therefore, claimants are entitled to Rs. 76,800/- on this count. We are of the opinion that Tribunal

has granted adequate compensation under other heads. Therefore, additional amount of Rs.76,800/- should be deposited by the 5th respondent Insurance company with 7.5 % interest over and above the decreed amount by the Tribunal from the date of application till its deposit. On deposit of the amount, father and mother of the deceased can withdraw the amount.

Appeal is partly allowed.

Sd/-

J.B. KOSHY, JUDGE.

Sd/

K. HEMA, JUDGE.

Krs.

J.B. KOSHY & K. HEMA, JJ.

M.F.A. No. 593 of 2002

Dated this 19th day of November, 2007

JUDGMENT